

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

VIRTUAL STUDIOS, INC.,)	
)	
)	
Plaintiff,)	
)	Civil No. 1:12-cv-39
vs.)	
)	
MENARD, INC.,)	
)	
Defendant.)	
)	

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Menard, Inc. (“Menard”), d/b/a Midwest Manufacturing, moves to dismiss all claims brought by Plaintiff Virtual Studios, Inc. (“Virtual”).¹ Virtual purports to state copyright and related claims arising out of its past business relationship with Menard. The agreement governing the parties’ relationship requires the arbitration of arbitrable claims and the trial in Wisconsin of nonarbitrable claims, if any. Accordingly, Virtual’s claims should be dismissed in order to effectuate the parties’ agreement. In the alternative, the Court should dismiss Virtual’s claims for lack of personal jurisdiction pursuant to Rule 12(b)(2). At the very least, the Court should dismiss Counts III and IV pursuant to Rule 12(b)(6) because Count III (unjust enrichment) is preempted by the United States Copyright Act, 17 U.S.C. § 301, and Count IV (misrepresentation) is insufficiently pleaded under the heightened pleading requirements of Rule 9. A supporting memorandum of law will be filed.

¹ Alternatively, the Court should dismiss Virtual’s claims pursuant to Rule 56.

DATED this 12th day of April, 2012.

Respectfully submitted by,

/s/ John T. Winemiller

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Counsel for Menard, Inc.

**Pro hac vice Motion to be filed*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt on this 12th day of April, 2012.

/s/ John T. Winemiller